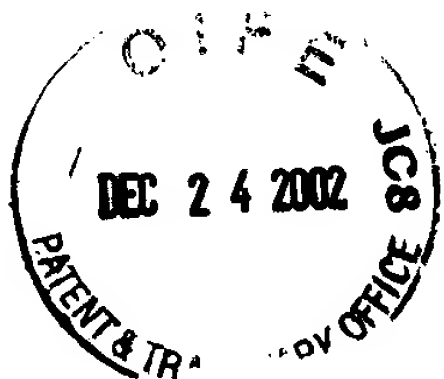


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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Shultz, et al.

Serial No.: 09/780,863

Filed: February 9, 2001

For: **EXOGENOUS NUCLEIC ACID DETECTION**

Examiner: Arun K. Chakrabarti

)
) Attorney Docket:
) 6868/81579
) PRO-105.0 Div I
)
) Group Art Unit:
) 1634
)
)

ELECTION

Commissioner For Patents
Washington, D.C. 20231

Sir:

This paper is in response to the Requirement for Restriction/Election mailed July 30, 2002, for which a Petition for an Extension of Time and the required fee is enclosed. A provisional election is made herein, with traversal of the restriction requirement.

REMARKS

Consideration and examination of the above-identified application is respectfully requested in view of the provisional election that follows.

I. Election

The Examiner noted in the Office Action that claims 45 and 47 both depend from the generic claim 43 which does not recite individual sequences. However, the Office Action still request a provisional election of a specific

sequence. The maintenance of the restriction requirement is hereby respectfully traversed. In response, for claim 45, we provisionally elect SEQ ID NO: 86 and for claim 47, we provisionally elect SEQ ID NO: 82.

It is hereby admitted that the subject matter recited in claims 45 and 47 are obvious over the claim 43 in combination with the disclosures of the present patent application as filed which recites all of the sequences recited in claims 45 and 47. Because the subject matter recited in Claims 45 and 47 are entirely within the scope of claim 43, and the specific sequences have been specifically supported in the present patent application, we believe that the subject matter of claims 45 and 47 will be allowable if the subject matter of claim 43 is found to be allowable.

It is respectfully noted that while structurally different biological sequences may be patentably unobvious over the disclosures of the present patent application, the practice of the invention as recited in claim 43 carried out with a structurally different sequence will be dominated by the present claim 43 if it issues in a patent.

SUMMARY

Claims 43 through 56 are presently pending in the subject application.

It is believed that the application is in condition for allowance. An early allowance is earnestly solicited.

A fee for the Petition for an Extension of Time is enclosed. No further fee or petition is believed to be necessary. However, should any further fee be needed, please charge our Deposit Account No: 23-0920, and deem this paper to be a required petition.



The Examiner is requested to phone the undersigned should any questions arise that can be dealt with over the phone to expedite this prosecution.

Respectfully submitted,

By Shannon L. Nebolsky
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CERTIFICATE OF EXPRESS MAILING

I hereby certify that this Election, together with a Petition for an Extension of Time and its fee, is being deposited with the United States Postal Service with United States Postal Service Express Mail Service with Express Mailing No. addressed to Commissioner for Patents, Washington, D.C. 20231, on December 24, 2002.

EV 045460863 US

Ray H. Farn